

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

SEAN M. DIVERS,	)	4:10CV3246
	)	
Plaintiff,	)	
	)	
v.	)	<b>MEMORANDUM</b>
	)	<b>AND ORDER</b>
EAT OUT NOW, Inc,	)	
	)	
Defendant.	)	

This matter is before the court on its own motion. On March 23, 2011, the court conducted an initial review of Plaintiff's Complaint and found that Plaintiff failed to state a claim upon which relief may be granted as to all claims asserted. (Filing No. [11](#).) In particular, the court determined that:

Plaintiff does not allege that he has a physical or mental impairment which substantially limits one or more of his major life activities, that he has a record of such an impairment, or that he is regarded as having such an impairment. In addition, he does not allege that he was qualified to perform the essential functions of his job.

(*Id.* at CM/ECF p. 3.) In light of these pleading deficiencies, the court granted Plaintiff an opportunity to amend.

In response, Plaintiff filed an Amended Complaint on April 14, 2011. (Filing No. [13](#).) The allegations of the Amended Complaint are sparse, and Plaintiff simply states that he has a "learning disorder," and that the court should "subpeona [sic] the Nebraska Equal Opportunity Commission for any and all information regauarding [sic] the dissmissal [sic] of Mr. Divers . . ." (*Id.* at CME/CF p. 1.) After careful review of the Amended Complaint, the court finds that, even after amendment, Plaintiff has failed to state a claim upon which relief may be granted. *See Ashcroft v. Iqbal*, [129 S. Ct. 1937, 1950 \(2009\)](#) ("A claim has facial plausibility when the plaintiff pleads

factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”); *Martin v. Sargent, 780 F.2d 1334, 1337 (8th Cir. 1985)* (holding that, regardless of whether a plaintiff is represented or is appearing pro se, the plaintiff’s complaint must allege specific facts sufficient to state a claim). For these reasons, and the reasons set forth in the court’s March 23, 2011, Memorandum and Order, this matter is dismissed without prejudice.

IT IS THEREFORE ORDERED that:

1. This matter is dismissed without prejudice because the Amended Complaint fails to state a claim upon which relief may be granted.
2. A separate judgment will be entered in accordance with this Memorandum and Order and the court’s March 23, 2011, Memorandum and Order.
3. All pending motions are denied as moot.

DATED this 5<sup>th</sup> day of May, 2011.

BY THE COURT:

s/ Joseph F. Bataillon  
Chief United States District Judge

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